Wachter Construction, Inc. *and* Local 513, International Union of Operating Engineers, AFL–CIO

BSI Constructors, Inc. *and* Local 513, International Union of Operating Engineers, AFL–CIO

Woermann Construction Company *and* Local 513, International Union of Operating Engineers, AFL–CIO

Don C. Musick Construction Company *and* Local 513, International Union of Operating Engineers, AFL–CIO. Cases 14–CA–21263, 14–CA–21259, 14–CA–21264, and 14–CA–21257

May 27, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On October 17, 1991, Administrative Law Judge Claude R. Wolfe issued the attached decision. The Respondents filed exceptions and a supporting brief, and the Union filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order.[2]

The judge found that the Respondents unlawfully refused to provide the Union requested information pertaining to the subcontracting of bargaining unit work. Specifically, the Union requested the following information for each subcontract entered into since the May 1, 1989 effective date of the collective-bargaining agreement that involved covered onsite construction work within the geographic area covered by the collective-bargaining agreement: a copy of the subcontract, from which confidential financial information may be deleted; a list identifying the job location, the subcontractor, the nature of the work, and the starting and completion dates of the subcontracted work; and payroll records sufficient to show the wages and fringe benefits of the employees performing the work. In a second request, the Union also sought, on an ongoing basis, notification of each jobsite where bargaining unit work is being performed and a copy of the subcontracts, which again need not contain confidential financial information. The Respondents furnished some of the requested information, but declined to provide data concerning subcontracts outside the 30-day period prior to the Union's request (concerning which they asserted no grievances could be filed); the actual subcontracts (which they contended were voluminous and irrelevant); and the subcontractor payroll records (which they stated they did not possess).

We agree with the judge's conclusion that the Respondents' refusal violated Section 8(a)(5) and (1) of the Act for the following reasons. Although the presumption of relevance does not apply to information pertaining to employees outside the bargaining unit, the Union has carried its burden of showing that the request for information concerning subcontractors raises ''the probability that the desired information was relevant'' and ''of use to the Union in carrying out its statutory responsibilities.'' See *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). The Union stated in its requests that its purpose in seeking the information was to ensure compliance with section 1.08 of the parties' collective-bargaining agreement. Section 1.08 provides that the Respondents may subcontract bargaining unit work to ''subcontractors who agree in writing to pay wages and fringe benefits of monetary value in aggregate equal to or greater than those provided in this agreement . . . . In the event the subcontractor does not pay wages and fringe benefits in the aggregate as provided in this Agreement, the Employer shall terminate the subcontract and remove the subcontractor from the job site.'' After receiving reports that other subcontractors were underbidding those with collective-bargaining agreements with it, the Union decided to enforce the requirements of section 1.08. We find that the information requested is relevant to that purpose, and therefore must be provided by the Respondents.

Contrary to the view of our dissenting colleague, our Order requires the Respondents to furnish to the Union all the information sought. We find that the judge's reasoning for providing information about subcontracts prior to 30 days before the Union's request similarly undermines our colleague's 6-month limitation. As the judge found, information since the effective date of the parties' agreement is relevant and useful to the Union's determination of the Respondents' compliance with the cited provisions, as well as of the frequency of noncompliance, which may be a significant consideration for a potential grievance and future bargaining.

[1] We agree with the judge that the parties must bargain over sharing the costs of producing the requested information, and we leave this matter to the compliance stage of this proceeding.

[2] In their exceptions the Respondents point out that the judge found that the Union's requests were directed specifically at subcontracts involving asphalt paving work. The Respondents contend that the judge therefore erred in not limiting the remedy to such subcontracts. The Union contends in its brief that its requests were not limited to asphalt paving. In adopting the judge's recommended Order requiring the Respondents to provide the Union with the requested information, we find merit in the Union's position. The judge's finding that the Union was concerned specifically with asphalt paving was based on a single letter from the Union to an employer not involved in this proceeding. We note that the Union's requests to the Respondents consistently addressed the subcontracting of ''on-site construction work'' covered by the collective-bargaining agreement and did not specify asphalt paving work.

With respect to the furnishing of the actual subcontracting documents, we find that the Union has adequately demonstrated the relevance of these documents by reference to section 1.08 of the collective-bargaining agreement. Although the separate letter agreements pertaining to the payment of union-equivalent wages and benefits would demonstrate the Respondents' compliance with the requirement to obtain such agreements, they would not indicate whether the subcontracts allow for termination for failure to adhere to the separate agreements as required by section 1.08, or allay the Union's concerns that the agreements had only been obtained after the fact.

Furthermore, contrary to our colleague, we do not find that the amount of work involved in satisfying the Union's request indicates that the request is either overbroad or intended to harass the Respondents. In this regard, it is not uncommon for such requests to involve a large number of documents and to demand a substantial effort by the employer. The Board has found that the burden in time and money necessary to fulfill a request for information is not a basis for refusing the request. Instead, these matters are to be considered in the compliance stage and, as noted earlier, the parties must bargain concerning costs. Hence, in the present case, the issue of cost clearly did not in itself render the Union's request overbroad and, without more, we cannot conclude that it is.[3] Accordingly, we further cannot agree with our dissenting colleague's summary finding that the Union's motivation here was, at least in part, to harass the Respondents as he relies for this finding solely on his contrary conclusion that the request was overly broad. Moreover, the Board has found that, although an employer need not comply with an information request where the sole purpose for the request is to harass the employer, the good-faith requirement will be satisfied where any of the union's reasons for seeking the information can be justified. *Island Creek Coal*, 292 NLRB 480 (1989). We have determined above that the Union sought to enforce its collective-bargaining agreement with the Respondents, and we therefore find that its request was made in good faith.[4]

With regard to the subcontractor payroll information requested by the Union, we find that it, like the other information sought, is relevant to the Union's intent to determine if section 1.08 is being properly administered by the Respondents and their subcontractors. We note that section 1.08 provides not only that the Respondents subcontract only with companies that agree in writing to pay wages and benefits at least equal to those prescribed by the collective-bargaining agreement, but also that the Respondents shall terminate the subcontracts of any subcontractor that does not fulfill its obligations under the agreement. Thus, we agree with the judge that the Respondents' responsibilities do not end with the receipt of a letter agreeing to pay the appropriate wages and benefits. The requirement to terminate nonconforming subcontracts implies an additional duty to monitor the wages and benefits actually paid by subcontractors. In view of this duty, we find that the Respondents are required to have sufficient access to the records of their subcontractors to enable the Respondents to make these records available to the Union.[5]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Wachter Construction, Inc., BSI Constructors, Inc., Woermann Construction Company, and Don C. Musick Construction Company, St. Louis, Missouri, their officers, agents, successors, and assigns, shall take the action set forth in the Order.

MEMBER OVIATT, dissenting in part.

I agree with my colleagues that the Respondents must provide at least some of the information requested by the Union, subject to bargaining over sharing the costs of producing that information.

I differ with my colleagues and the judge, however, as to the scope of the information that is required to be produced. I would require the Respondents to furnish information only for the 6-month period preceding the filing of the charges herein; I would not require the disgorgement, in toto, of all subcontracts as requested by the Union; and I would not require the Respondents to furnish payroll and other records of independent companies.

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[3] *Safeway Stores*, 252 NLRB 1323 (1980), enfd. 691 F.2d 953 (10th Cir. 1982). Additionally, as noted by the judge, the Union never refused to pay for reasonable costs and the Respondents initially raised other reasons unrelated to costs for their failure to produce the requested documents.

[4] See also *Hawkins Construction Co.*, 285 NLRB 1313 (1987). We note that the Eighth Circuit denied enforcement of the Board's decision in *Hawkins*, 857 F.2d 1224 (1988), solely on the basis that the Board had erred in rejecting the administrative law judge's factual finding, based on credibility, that the union's information request was made in bad faith. In the instant case, we agree with the judge that the evidence does not establish bad faith or harassment.

We also note that the judge did not make a finding that the other union previously involved in this case intended to harass the Respondents in making a similar information request. Although the judge stated that there was ''reason to believe'' that the other union's efforts were directed at harassing employers, he found that the conduct of that union was not before him and declined to draw any conclusions regarding its motives. He did find, however, that the motives of the other union should not be imputed to the Union here, and credited testimony that the Union was attempting to enforce the subcontracting provisions of its agreement with the Respondents.

[5] We note that the Board's decision in *Public Service Co. of Colorado*, 301 NLRB 238 (1991), does not foreclose this remedy. The Board did not reject such a remedy in that case, where the issue was apparently not before it.

In *Public Service Co. of Colorado*, 301 NLRB 238 (1991), the Board ordered the Respondent to ''make reasonable efforts to obtain'' information concerning the wages paid employees by a subcontractor on the respondent's premises, in connection with a grievance filed by the union alleging that the wages paid were insufficient under the contract. I adhere to the decision in that case, and it does not in my view support the Order here. The contract in *Public Service* provided, inter alia, that the company could order an audit of the contractor's records to determine if the ''[sub]-contractor'' was complying. No such contention is made here. Indeed, in discussing the matter here, the judge concluded he was ''persuaded Respondents' have a duty to request records from its subcontractors . . . to comply with the contract.'' That, of course, is not the same as ordering the Respondents to ''provide [the Union] with copies of the subcontractors' payroll records.'' Nor does it by any stretch of the imagination justify requiring all the Respondents to turn over their subcontracts in their entirety. The subcontracts themselves, of course, are not presumptively relevant. Thus, a more precise demonstration of their relevance is required before any obligation attaches. *Island Creek Coal Co*., 292 NLRB 480, 490 (1989), and cases cited. But no attempt to demonstrate such relevance was made here. Rather, both in its initial and its second-round letters to the Respondents, the Union based its request on section 1.08 of the collective-bargaining agreement, which provides that nothing in the agreement should be construed to limit the Employer's right to subcontract, except that the Employer would not undermine the wage and fringe benefit standards

> by subcontracting work that would be otherwise done by bargaining unit employees . . . except by subcontractors who agree in writing to pay wages and fringe benefits of monetary value in aggregate equal to or greater than those provided in this agreement.

As quoted by the judge, the Respondents' letters in answer to the Union noted that it was the Respondents' custom ''to obtain from subcontractors the written agreement required by Section 1.08 in the form of a separate letter rather than as part of the formal subcontract documents,'' and copies of written confirmations by those contractors who did not have their own contracts directly with the Union were enclosed. This information, in my view, is all that is required of the Respondents here. Further, as discussed above, the Union has not shown the relevance and need for the additional information it requested (i.e., all the subcontracts in their entirety).[1]

Accordingly, I would require the Respondents here to furnish the Union with a list of jobsites on which it subcontracted work covered by its collective-bargaining agreement with the Union for a period beginning 6 months prior to the Union's filing of a charge here and, for each such jobsite, the names of the subcontractor(s) used by the Respondents, the nature of the work involved, and the starting and completion dates of the subcontracted work, together with copies of any written agreements by the subcontractors ''to pay wages and fringe benefits of monetary value in aggregate equal to or greater than'' those provided in the agreement, as relevant under section 1.08. If a Respondent does not have the written agreement on wages, I would require it to make reasonable efforts to obtain and furnish the union with the relevant information on wages and fringe benefits, in accord with *Public Service Co. of Colorado*, supra.

[1] It should also be noted that there is a considerable amount of work involved for each Employer in locating, retrieving, reviewing, analyzing, sorting, editing, and copying all the subcontracts demanded (ranging from a minimum of some 600 to over 1240 subcontracts for each Respondent). Thus, in addition, I would conclude that the Union's pursuit of this overly broad request was meant, at least in part, to harass the Respondents, as the judge found was the case with the other union originally involved in this proceeding.

Stephen D. Smith, Esq., for the General Counsel.
David G. Millar, Esq., for the Respondent Employers.
Bruce C. Feldacker, Esq., for the Charging Union.

DECISION

STATEMENT OF THE CASE

CLAUDE R. WOLFE, Administrative Law Judge. This consolidated proceeding[1] was litigated before me at St. Louis, Missouri, on April 15 and 16, 1991, pursuant to charges and amended charges filed and served on February 20 and March 15, 1991, and a consolidated complaint issued on March 21, 1991. General Counsel alleges that Wachter Construction, Inc. (Wachter), BSI Constructors, Inc. (BSI), Woermann Construction Company (Woermann), and Don C. Musick Construction Company (Musick) (sometimes collectively referred to as Respondents), have violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing and refusing to furnish Local 513, International Union of Operating Engineers, AFL–CIO (the Union) with requested information that is necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of certain of the Respondents' employees. Respondents deny the commission of unfair labor practices.

[1] This consolidated proceeding originally involved 9 separate employers, 2 unions, and a total of 12 charges. Cases 14–CA–21226 and 14–CA–21115 involving, respectively, Landmark Systems and G. S. & S. Inc. were severed and settled at hearing. Cases 14–CA–21117, 14–CA–21190, 14–CA–21206, 14–CA–21207, 14–CA–21208, and 14–CA–21255, each involving a separate employer and Laborers' International Union of North America, AFL–CIO, were individually severed and settled after the hearing closed.

On the entire record, and after considering the demeanor of the witnesses and the able posttrial briefs of the parties, I make the following

FINDINGS OF FACT

I. STATUS OF THE RESPONDENTS

Each of the four Respondents is a Missouri corporation with offices and place of business in St. Louis, Missouri, and is engaged as a general contractor in the building and construction industry, constructing commercial facilities. During the 12-month period ending January 31, 1991, Wachter, BSI, and Woermann each, in the course and conduct of its business operations described above, purchased and received at its St. Louis, Missouri facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Missouri. During the 12-month period ending December 31, 1990, Musick, in the course and conduct of its business operations described above, purchased and received at its St. Louis, Missouri facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Missouri. Each of these four Respondents is now, and has been at all times material to this proceeding, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Relationship Between the Parties, the Requests for Information, and the Responses to the Requests*[2]

All four Respondents are party to a collective-bargaining agreement between Associated General Contractors of St. Louis (AGC), a multiemployer group of which they are members, and the Union. This agreement is applicable to the Respondents' employees who work on ''building, heavy and highway, site preparation, tank farms, mechanical and processing lines, treatment plants and elevated water towers, asphalt plants, dredging construction work, fiber optic projects and hazardous waste removal'' (sec. 1.03 of the agreement).

Section 1.08 of this agreement reads, in relevant part:

> Nothing in this Article shall be construed to limit or restrict, in any way, the Employer's right to determine which portions of the work, if any, the Employer may perform with the Employer's own employees or may subcontract to others.
>
> The Employer shall not undermine the wage and fringe benefit standards established by this agreement by subcontracting work that would be otherwise done by bargaining unit employees at a construction job site for performance except by subcontractors who agree in writing to pay wages and fringe benefits of monetary value in aggregate equal to or greater than those provided in this agreement.
>
> In the event the subcontractor does not pay wages and fringe benefits in the aggregate as provided in this Agreement, the Employer shall terminate the subcontract and remove the subcontractor from the job site.
>
> It is understood and agreed that this subcontractor clause requires said subcontractor to abide by and be bound by the terms and provisions of this collective bargaining agreement only for the period and on the project where the subcontractor relationship exists.

The Union, by its president and business manager Jack Sawyer, sent the following letter to Wachter on October 5, 1990, and identical letters to Musick on October 31, 1990, and to BSI and Woermann on December 10, 1990:

> RE: Enforcement of Section 1.08 of the Collective Bargaining Agreement between the Associated General Contractors of St. Louis and the International Union of Operating Engineers Local No. 513.
>
> As you know, you are a party to the above collective bargaining agreement.
>
> Section 1.08 of the agreement permits subcontracting of operators work provided certain conditions are met by the subcontractor. In order to ensure compliance and properly enforce Section 1.08, this is to request that you provide me with a copy of all agreements in which you have subcontracted covered on-site construction work to any other contractor within the geographic area covered by the contract since May 1, 1989. You may delete any confidential financial information from the information provided.
>
> Also, please provide a list of each job for which you have provided a subcontract as requested. As to each subcontract: (1) identify the location, (2) state the name of the subcontractor, the nature of the project and of work subcontracted, and (3) state the date the subcontracted work began and was completed or is to be completed.
>
> Finally, as to each subcontractor during the period covered by this information request, please provide us with copies of the subcontractors' payroll records for the employees performing covered operators work. This request includes all records needed to verify all wages, fringe benefit contributions, or other payments of any kind to employees to ensure compliance with section 1.08. If you so desire, you may made arrangements for us to independently audit such records ourselves rather than obtaining and forwarding the records to us.
>
> Please provide the requested copies of subcontract agreements and payroll records with ten (10) days. If you need additional time, or have any questions about the information requested, please feel free to contact me. Otherwise, I will expect the information within the requested time. Thank you for your cooperation in this matter.

[2] The findings of fact are based on the credible testimony of the participants and documentary evidence received. I have considered all the testimony and other evidence of record. In those instances where conflicts in testimony arise I have considered the reasonable probabilities, the convincing character of the testimony, and comparative demeanor of opposing witnesses. I have credited parts of witnesses' testimony while not crediting other parts as appropriate. *NLRB v. Universal Camera Corp.*, 179 F.2d 749 (2d Cir. 1950), vacated on other grounds 340 U.S. 474 (1951).

This letter was again mailed to Wachter by Sawyer on January 18, 1991, together with a new letter set forth below. These two documents were also mailed by Sawyer to Woermann on January 16, 1991, to Musick on January 21, 1991, and to BSI on January 17, 1991. Another copy of the document set forth below had been previously directed to BSI on December 11, 1990:

> RE: Compliance with Section 1.08 of Operating Engineers Local 513 Collective Bargaining Agreement
>
> Dear Sir:
>
> As you know, Section 1.08 of the collective bargaining agreement between the Associated General Contractors of St. Louis and the International Union of Operating Engineers Local 513 provides that a covered employer, such as your company, ''will not subcontract on site construction work requiring operators for work covered hereunder except to subcontractors who agree in writing to pay to, provide for, their employees so engaged, wages and fringe benefits no less than those specified in this Agreement . . . .''
>
> In order to properly administer the contract, and in order to assure your company's compliance with Section 1.08, this is to request that your company henceforth provide the Union with a copy of each subcontract that your company makes for the subcontracting of on site construction work requiring operators for work covered by the contract. Please provide this requested information from this date forward for each subcontract on each work site on a continuing basis within five (5) days after the subcontract is entered into. You may delete confidential financial information from the documents provided, but we should otherwise be provided with complete copies of the subcontracts so that we may verify their compliance with Section 1.08. This request is in addition to any request previously made to your company for information on past subcontracts.
>
> Also, so that the Union may administer and enforce its collective bargaining agreement with you more efficiently and effectively, this is to request that, from this date forward, your company notify the Union as to each job site on which you are performing work within the area covered by the collective bargaining agreement. This information should be provided within five (5) days after the contract for the work is executed by your Company. This information is needed so that we can check the job site for compliance with the contract, including, but not limited to, verification that all laborers work is either performed by your company or properly subcontracted.
>
> If you fail to provide the required documentation and information to us on an ongoing basis, and the Union should independently uncover a violation of Section 1.08, the Union will deem the failure as a waiver of the thirty-day limit on the retroactivity of an arbitrator's award under Section 10.01 of our collective bargaining agreement to the extent that Section might otherwise arguably apply.
>
> Please respond to this letter within seven days indicting your agreement to providing the requested documents and information. If you do not promptly reply, we will presume that you are not wiling to provide the information as requested and will take appropriate legal steps to enforce our rights.
>
> If you have any questions about the information requested or the procedures to follow in providing it, or any difficulty with the time requirements I have proposed, please feel free to contact me. We are willing to cooperate so that you can provide the information which we need with as little inconvenience to your operations as is reasonably possible. Thank you for your cooperation.

The Respondents furnished some of the information requested, but declined to furnish the remainder. BSI's letter of March 6, 1991, directed to the Union, with the exception of the dates referenced and the recitation of information listed as provided in the second paragraph of the letter, is for all practical purposes identical to the letters sent the Union by Wachter, Woermann, and Musick on March 5, January 22 and 25, 1991, respectively. BSI's letter reads as follows:

> The purpose of this letter is to restate in greater detail the position of BSI in response to the requests for information contained in your letters dated December 10, 1990 and December 11, 1990, which were postmarked in January and received by us on January 10, 1991, and your letters dated January 17, 1991.
>
> On February 5, 1991, we sent you our sub-supplier lists for all projects of BSI on which subcontracts relevant to your inquiry were in progress on and after December 9, 1990. The lists identified, for each project, the nature of the project; its location; the names of our subcontractors, including those whose work included, in full or part, work which we understand to be within the jurisdictional claims of your Union; and the nature of the subcontracted work. Although it may not be relevant to your inquiry, the lists included, in some cases, subcontracted work which our company never would perform with its own employees. Please note that the firms named on the list for the Missouri Botanical Gardens project are not actually subcontractors of BSI, as we are construction manager only on this project and have no contracts with the other firms listed.
>
> Your letters requested that our list of projects cover the time period from May 1, 1989 to date, in order to assist in enforcement of section 1.08 of our collective bargaining agreement with your Union. It would have been extremely burdensome and time consuming for us to have researched and collected the relevant information from May 1, 1989. We note that under section 10.01 of our contract, a contract grievance cannot be enforced by an arbitration award for more than thirty days prior to date of filing a written complaint with BSI. Accordingly, we believe that information relating to events more than thirty days prior to our receipt of your first letters on January 10, 1991 would be irrelevant to enforcement of section 1.08. For that reason, the lists we furnished covered the period beginning December 9, 1990.
>
> Your letters requested copies of our subcontract agreements relevant to enforcement of section 1.08. It is our understanding that all subcontractors on our lists,

except Byrne & Jones Paving Company and Leritz Contracting, Inc., that utilize Operating Engineers have their own contracts directly with your Union; therefore, only our subcontracts with Byrne & Jones and Leritz are relevant to enforcement of section 1.08. It has been our custom to obtain from subcontractors the written agreement required by section 1.08 in the form of a separate letter, rather than as part of the formal subcontract documents. Accordingly, we provided you with a copy of a written confirmation of agreement by Byrne & Jones Paving Company and enclose herewith the similar confirmation by Leritz to pay wages and fringe benefits as specified therein, which satisfies the obligations of BSI under section 1.08 of our contract with your Union. For the reasons explained above, we have not furnished copies of the complete subcontract documents with Byrne & Jones and Leritz, which are not relevant or necessary to the purpose identified in your letter, and in addition are voluminous and contain sensitive cost and other confidential competitive information which would require careful review by executives of the company to identify and excise.

If there are additional reasons, unknown to us at present, why subcontract information prior to December 9, 1990, or complete subcontract documents, or both are needed for the Union's legitimate representational functions, we would be willing to furnish such additional information, provided that the Union would agree to pay our costs incurred to identify, retrieve, review and copy such information from available records, which will require substantial time of both clerical and executive employees.

Your letters also requested information concerning our subcontractors' payroll records. BSI does not have such information in its possession, and is therefore unable to comply with this request.

Finally, your letters made a continuing request, unlimited in time, for a copy of every subcontract let by BSI in the future that involves Operating Engineer work, and for notification to the Union within five days of every construction contract entered into by BSI in the future, irrespective of whether any Operating Engineers' work is involved and irrespective of whether any work is subcontracted. We believe that such an open-ended request for future information exceeds any obligation BSI may have, especially since it has no demonstrated relevance to any identified contract violation or grievance, no collective bargaining is now in progress between BSI and Local 513, and our existing contract with the Union will not expire until May 1, 1992. We do not agree that failure to provide such future information on an outgoing basis will constitute a waiver of the thirty-day limitation of section 10.01 of our contract.

The foregoing exchanges between the Union and the Respondents resulted in the furnishing of some information and a rejection of the Union's requests to the extent they asked for (1) information covering a period more than 30 days prior to the requests, (2) subcontractors' payroll records not in the Respondents' possession, (3) the actual subcontracts,[3] and (4) the furnishing of subcontracting information on a continuing basis.

B. *Discussion*

Information concerning subcontracting of work performed by members of the bargaining unit is relevant to a union's performance as the representative of unit employees,[4] and it is settled that information relating to one or more provisions of an existing collective-bargaining agreement is ''information that is demonstrably necessary to the [Union] if it is to perform its duty to enforce the agreement and to prepare for possible future negotiations.''[5] Here both situations are present. The information sought relates to section 1.08 of the agreement, and, notwithstanding the uncontroverted and credible testimony that Respondents have not historically and do not now perform paving work with its own employees, sections 1.03, 5.06, 17.03, and 17.04, as well as 1.08, show that the agreement establishes employee entitlement to paving work and the applicable wage rates therefor in the absence of subcontracting. That the Union's requests for information are indeed directed at the subcontracting of paving work is made clear by the following statement of the Union's president Sawyer, in his January 23, 1991 letter to Korte Construction, to whom similar request letters had been directed:

> In your letter to me . . . you go on and on about electrical, mechanical, heating, and air conditioning subcontractors and I have no idea what you are talking about. *It should be clear to you we are concerned about Paving contractors not these others*.[6]

Under the Board's liberal discovery-type standard,[7] all the information requested by the Union is probably relevant to the Union's efforts to assure that the subcontracting provisions in the collective-bargaining agreement are being complied with when paving work is contracted out.

Respondents protest that the requests for information were not made in good faith, but were designed to harass Respondents into placing all their paving work with unionized paving contractors who are party to a collective-bargaining agreement between the Union and the Bituminous Paving Contractors Association (Paving Contractors). An employer is not required to furnish requested information if the sole reason for the request is harassment, but a union may satisfy the good-faith requirement if at least one reason for the request can be justified.[8] In support of Respondent's bad-faith contention, the record shows that similar requests for information with identical letters used were initiated by Myrl Taylor, secretary-treasurer of the Eastern Missouri Laborers' District Council, Laborers' International Union of North

[3] Wachter furnished copies of subcontracts and one subcontractor's payroll.

[4] See, e.g., *Island Creek Coal Co.*, 292 NLRB 481, 490 fn. 18 (1989), and cases referred to therein.

[5] *A. S. Steel Co.*, 230 NLRB 1112, 1113 (1977); *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *W. B. Skinner, Inc.*, 283 NLRB 989, 990 (1987); *Wabeek Country Club*, 301 NLRB 694 (1991).

[6] Emphasis added.

[7] See *NLRB v. Acme Industrial Co.*, supra; *General Motors Corp. v. NLRB*, 700 F.2d 1083, 1088 (6th Cir. 1983).

[8] *Island Creek Coal Co.*, 292 NLRB 480, 489 (1989).

America (Laborers) which is also a party to an AGC agreement binding on Respondents, and an agreement with Paving Contractors. The testimony and letters of Taylor show that he, in the fall of 1990, embarked on a course of action designed to force the AGC members to subcontract only to unionized employers. Although Taylor contends his efforts were directed at all nonunion subcontracting, his writings show his real concern was asphalt paving subcontracting. He prepared model request letters, and mailed copies to all 31 unions in the Building Trades Council. It does not appear that any union except the Union and the Laborers used the letters, of which those set forth hereinabove are copies adjusted for the Union's use, nor does it appear that any of the other unions made similar requests. The conduct of the Laborers is not before me, and the references to Taylor's efforts are only introduced as background against which to assess Sawyer's conduct. Although there is reason to believe Taylor's efforts were really directed at harassing employers into giving their paving work to unionized contractors, his motives, whatever they were, may not be lightly imputed to Sawyer. Although Sawyer, like Taylor, was concerned about the subcontracting of asphalt paving, Respondents have not carried their burden[9] of proving Sawyer's requests for information were made in bad faith. Moreover, although Sawyer did not testify, Walter Arnette, the Union's business representative, credibly testified the Union perceived a need to enforce the subcontracting provision of the collective-bargaining agreement because it had received quite a few complaints from unionized paving contractors that nonunion subcontractors were not paying the union scale. This, I find, was sufficient reason, given the 1.08 requirement that subcontractors agree to pay wages and fringe benefits in the aggregate equal to or greater than those in the agreement, and the settled principle that a bargaining agent is not required to show that the information giving rise to its request is ''accurate, non hearsay, or even ultimately unreliable,''[10] for the Union to request information relative to whether this requirement was being complied with. Accordingly, I conclude there was a justifiable reason for the requests which were therefore made in good faith.

In addition to its bad-faith claim, which I have rejected, Respondent raises other affirmative defenses. Respondent argues the Union's asserted objective of contract enforcement would violate Section 8(e) of the Act because the Union has no existing collective-bargaining relationship with Respondents covering the employees who will perform subcontracted work, citing *Connell Construction Co. v. Plumbers*, 421 U.S. 616 (1975). This argument has no merit. The agreement's provisions for the use of unit employees in asphalt plants (secs. 1.03, 8.21, 17.03), for paving (sec. 5.06), for operating asphalt rollers (sec. 17.03), and for asphalt mixing (sec. 17.04) are sufficient to show that unit employees are entitled to perform asphalt paving work if it is not subcontracted out pursuant to section 1.08 which conditions the subcontracting on the maintenance of wages and fringe benefits by the subcontractor at least as good, in the aggregate, as those established in the collective-bargaining agreement. In short, the agreement only permits the subcontracting of asphalt paving, which would otherwise be done by unit employees, on condition that unit employees' wage and benefit standards will not be undermined by the subcontracting. That Respondents have always elected to utilize subcontractors rather than their own employees for asphalt paving does not change the simple fact it is unit work with agreed wage scales therefor that is being contracted out. *Connell*, which dealt with a bare subcontracting agreement rather than a complete collective-bargaining contract and relationship, is not applicable to the situation before me.

The contention that the Union has failed to demonstrate the relevance of the disputed information, and therefore Respondents have no duty to supply it is rejected. There need only be a probability that the information requested is relevant[11] and the requests on their face show the Union was seeking the information for contract enforcement purposes, citing the appropriate contractual section. This is sufficient to effect the broad discovery to which the Union is entitled.

The argument that Respondents have no duty to produce because the Union refused to negotiate payment of the costs of production is not impressive because it is clear the issue of costs is not a determining factor in Respondents' refusal to produce. The Union has not refused to pay reasonable costs, and Respondents cannot be heard to say they will not produce because they do not have to for various reasons unrelated to costs and then contend the Union will not negotiate over the costs of producing that which they will not for other reasons produce. In any event, the question of costs can be resolved by the parties through good-faith bargaining.

With respect to Respondents' argument that it need not furnish information covering a period more than 30 days prior to the Union's request because the collective-bargaining agreement provides arbitration awards shall not be retroactive for more than 30 days from the filing of the complaint, I am persuaded the provision of information prior to the 30 days is required. The Union is entitled to know whether there has been a long-term pattern of noncompliance with the contract's provisions concerning subcontracting, or whether any noncompliance was minimal and/or isolated so as not to warrant a grievance or future bargaining on the matter. The Union's request for information concerning subcontracting commencing May 1, 1989, the effective date of the collective-bargaining agreement, should answer these questions. The Board has ordered an employer to furnish a list of subcontractors, the subcontracting agreement, and the wages and fringes paid on the employer's project for 4 years prior to the Union's request for information to aid in administering a collective-bargaining agreement,[12] and I therefore do not consider the request in this proceeding for information less than 2 years old to be unreasonable.

Turning from the provision of information on past subcontracting to the provision of future information on the subject, the furnishing of information on a continuing basis would enable the Union to monitor subcontractor compliance with section 1.08, which is an express condition of obtaining and retaining a subcontract with any of the Respondents who have an obvious duty to exert efforts to ensure that the contract to which they are a party is complied with. The Re-

[9] *Island Creek Coal Co.*, supra.

[10] *W. L. Molding Co.*, 272 NLRB 1239, 1240 (1984), quoting *Boyers Construction Co.*, 267 NLRB 227, 229 (1983).

[11] *NLRB v. Acme Industrial Co.*, supra at 437.

[12] *Hawkins Construction Co.*, 285 NLRB 1313 (1987), enf. denied on other grounds 857 F.2d 1224 (8th Cir. 1988).

spondents' duty does not end with the receipt of the subcontractor's written agreement to pay the appropriate wages and fringe benefits. That promise must be kept. Respondents cannot merely assume it is being kept, but must monitor compliance with the promise in order to know if and when it is required to exercise its contractual mandate to terminate subcontracts as set forth in section 1.08. Fairly read, section 1.08 requires the Respondents to monitor subcontractors' compliance with its terms on a continuing basis and to obtain the subcontractors' payroll and other records necessary to that oversight when the need arises. The Union, the other party to the collective-bargaining agreement, is equally entitled to such information. The fact that subcontractors may be reluctant to furnish such information to the general contractor is not a valid reason for Respondents' refusal to obtain such information because a refusal by a subcontractor to show it is complying with section 1.08 would be ample justification for terminating that subcontract. I do not believe that many, if any, subcontractors would choose to refuse its records to Respondents and thus risk termination of the subcontract. In sum, I am persuaded Respondents have a duty to request records from their subcontractors to carry out the obligation to comply with the contract by not retaining subcontractors who do not comply with the requirements of section 1.08 that they pay certain wages and fringe benefits. On receipt of those records Respondents have a further duty to furnish them to the Union on request and on a continuing basis.

To the extent Respondents are concerned that production might be burdensome, there would be considerable costs involved, and certain confidential data ought not be given to the Union, those concerns can be alleviated by good-faith negotiations between the Union and Respondents concerning the deletion of truly confidential material and the equitable allocation of costs incurred in securing, copying, and furnishing the documents requested.

CONCLUSIONS OF LAW

1. Each of the Respondents is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to furnish the Union with requested information that is relevant to administering the Union's collective-bargaining agreement with Respondents, the Respondents have each violated Section 8(a)(5) and (1) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

In addition to the usual notice posting and cease and desist requirements, I shall recommend Respondents be required to furnish the Union with the information requested, with any concerns about confidentiality or the allocation of costs to be resolved by good-faith bargaining between the parties.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[13]

ORDER

Each of the Respondents, Wachter Construction, Inc., BSI Constructors, Inc., Woermann Construction Company, and Don C. Musick Construction Company, St. Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to furnish the Union with requested information that is relevant to administering the collective-bargaining agreement between Respondents and the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with the information it requested by letters to Wachter on October 5, 1990, and January 18, 1991; to Musick on October 31, 1990, and January 21, 1991; to BSI on December 10 and 11, 1990, and January 17, 1991; and to Woermann on December 10, 1990, and January 16, 1991.

(b) Post at its facility in St. Louis, Missouri, copies of the attached notices marked ''Appendixes A, B, C, and D.''[14] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[13] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Local 513, International Union of Operating Engineers, AFL–CIO by refusing to furnish the Union with requested information that is relevant to administering the collective-bargaining agreement between us and the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the information relating to subcontracting which it has requested from us.

WACHTER CONSTRUCTION, INC.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Local 513, International Union of Operating Engineers, AFL–CIO by refusing to furnish the Union with requested information that is relevant to administering the collective-bargaining agreement between us and the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the information relating to subcontracting which it has requested from us.

BSI CONSTRUCTORS, INC.

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Local 513, International Union of Operating Engineers, AFL–CIO by refusing to furnish the Union with requested information that is relevant to administering the collective-bargaining agreement between us and the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the information relating to subcontracting which it has requested from us.

WOERMANN CONSTRUCTION COMPANY

APPENDIX D

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Local 513, International Union of Operating Engineers, AFL–CIO by refusing to furnish the Union with requested information that is relevant to administering the collective-bargaining agreement between us and the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the information relating to subcontracting which it has requested from us.

DON C. MUSICK CONSTRUCTION COMPANY